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MEMORANDUM

January 31, 2013

TO: Contract Support Cost Clients

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP

RE: *Tribes Seek Senate Hearing on CSC Issues; IHS Releases Notes on CSC Attorney Meeting*

Tribal leaders have begun to ratchet up the pressure on the Indian Health Service (IHS) to resolve contract support cost (CSC) claims for past years and to work with Tribes on CSC issues moving forward. In the attached letter to Senator Maria Cantwell, Chair of the Senate Committee on Indian Affairs (SCIA), Chairman Ron Allen of the Jamestown S'Klallam Tribe asks for a hearing on CSC issues as soon as practicable. Chairman Allen criticized IHS's proposed "costs incurred" approach to settlement as misguided from the standpoint of both law and policy.¹ He suggested that the SCIA ask IHS why the agency continues to resist the use of the CSC shortfall reports as the basis for settlements.

Chairman Allen requested that the hearing also investigate ways Tribes can work with IHS, the Bureau of Indian Affairs (BIA), and Congress to ensure full CSC funding and avoid further litigation. In particular, the hearing should explore IHS's recent lack of transparency in refusing to share CSC distribution data with Tribes.

A resolution echoing Chairman Allen's call for an SCIA hearing on CSC issues is under consideration this week at the Affiliated Tribes of Northwest Indians (ATNI) Winter Convention.

Congressional scrutiny might help prod IHS towards a more efficient approach to resolving past CSC claims. As we reported, on January 17 attorneys from the Office of General Counsel (OGC) and the Department of Justice met with tribal attorneys working on CSC claims.² The meeting was productive, and tribal attorneys sought a follow-up meeting in March. Earlier this week, IHS Director Dr. Roubideaux stated to the Tribal Self-Governance Advisory Committee that she hopes tribal and federal attorneys will continue meeting and

¹ We have described IHS's approach, which attempts to minimize tribal claims, in detail in several recent reports. See, e.g., our memoranda of January 15, 2013 and November 2, 2012. Senator Mark Begich (D-AK) criticized the IHS approach in terms similar to Chairman Allen's in a recent letter to President Obama. See our memorandum of December 3, 2012 and attached letter.

² See our memorandum of January 18, 2013.

working toward a settlement framework acceptable to everyone. Earlier today, however, in the attached email, Julia Pierce of OGC announced that IHS's attorneys have no plans at present to meet again with tribal attorneys. At this point, the federal follow-up is limited to exploring procedural issues involving the role of the contracting officers. Ms. Pierce did not rule out another meeting, however. The email transmits the federal notes summarizing the January 17 meeting, which we also attach.

If you have any questions about this memorandum or about how these discussions impact the CSC case that we are handling for your tribe or tribal organization, please do not hesitate to contact Joe Webster (jwebster@hobbsstrauss.com, 202-822-8282), Geoff Strommer (gstrommer@hobbsstrauss.com, 503-242-1745), Steve Osborne (sosborne@hobbsstrauss.com, 503-242-1745).